

JUN 19 2003



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Michael N. Milby, Clerk of Court

In re ENRON CORPORATION
SECURITIES LITIGATION

This Document Relates To:

MARK NEWBY, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

ENRON CORP., *et al.*

Defendants.

Civil Action No. H-01-3624
(Consolidated)

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

KENNETH L. LAY, *et al.*

Defendants.

**THE BANK DEFENDANTS' SUPPLEMENTAL RESPONSE, IN LIGHT OF
THE RENEWED AUTOMATIC STAY OF DISCOVERY UNDER THE PSLRA,
TO LEAD PLAINTIFF'S PROPOSED PRETRIAL SCHEDULING ORDER**

Defendants Bank of America Corporation, Banc of America Securities LLC,
Credit Suisse First Boston Corp., Credit Suisse First Boston (USA), Inc., Pershing LLC,
Citigroup, Inc., Citibank, N.A., Salomon Smith Barney, Inc., Salomon Brothers International
Limited, Deutsche Bank AG, Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Merrill

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Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., J.P. Morgan Chase & Co., JPMorgan Chase Bank, J.P. Morgan Securities Inc., Canadian Imperial Bank of Commerce, CIBC World Markets Corp. f/k/a CIBC Oppenheimer Corp., Lehman Brothers Holdings Inc., and Lehman Brothers Inc. (collectively referred to as the “Bank Defendants”) respectfully submit this Supplemental Response, in Light of the Renewed Automatic Stay of Discovery Under the PSLRA, to Lead Plaintiff’s Proposed Pretrial Scheduling Order.

In its Order dated August 5, 2002, entered August 7, 2002, in this action (the “August 5, 2002 Order”), this Court ordered “that all discovery is stayed until the Court has ruled on the pending motions to dismiss.” (Emphasis in original). The Court based its Order on the section of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) that provides that the filing of a motion to dismiss shall automatically stay all discovery during the pendency of the motion:

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice.

15 U.S.C. § 78u-4(b)(3)(B); see August 5, 2002 Order, at 4 n.2 (“Once any motion to dismiss claims arising under the federal securities statutes is filed by any defendant, the provision of the [PSLRA], automatically staying ‘all discovery’ is triggered until the motions to dismiss are resolved.”) (citation omitted).

Thereafter, in its Memorandum and Order re Remaining Enron Insider Defendants dated April 23, 2003 (the “April 23, 2003 Memorandum and Order”), this Court resolved the last of the then-pending motions to dismiss the original Consolidated Complaint in this matter and, the pendency of any motion to dismiss thereby having come to an end, 15 U.S.C.

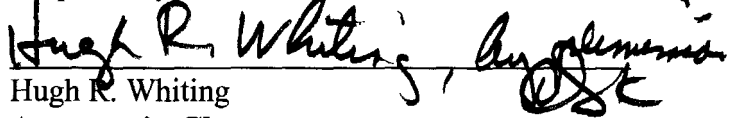
§ 78u-4(b)(3)(B), ordered that “the discovery stay under the PSLRA is hereby LIFTED.” April 23, 2003 Memorandum and Order, at 47.

On or around May 14, 2003, Plaintiffs filed their First Amended Consolidated Complaint for Violation of the Securities Laws (the “Amended Complaint”) in this matter. On May 29, 2003, defendant Joseph M. Hirko filed his motion to dismiss, and on June 18, 2003, numerous other defendants filed motions to dismiss the Amended Complaint.

The filing of motions to dismiss the Amended Complaint by newly added defendants and by existing defendants automatically stays all discovery in this action by operation of the PSLRA until the motions to dismiss are resolved, 15 U.S.C. § 78u-4(b)(3)(B), just as the motions to dismiss the original Consolidated Complaint automatically stayed all discovery in this action while those motions were pending. See, e.g., In re Imperial Credit Indus., Inc. Sec. Litig., 252 F. Supp.2d 1005, 1009 (C.D. Cal. 2003) (“the effect of” the filing of a motion to dismiss a third amended complaint by a newly added defendant “was to reinstate the automatic stay of discovery” pursuant to the PSLRA); Hillard v. Black, 125 F. Supp. 2d 1071, 1084 (N.D.Fla. 2000) (leaving the PSLRA discovery stay in place after the motion to dismiss of some of the defendants was denied). This is consistent with this Court’s prior Orders in this matter, including the August 5, 2002 Order and the April 23, 2003 Order, in light of the current circumstances.¹ Accordingly, the Bank Defendants respectfully request that the Court take the renewed automatic discovery stay into account in devising a pretrial scheduling order in this matter.

¹ The Bank Defendants believe that the mediation ordered by the Court is not affected by the automatic stay under the PSLRA and accordingly anticipate that the mediation will proceed during the pendency of the motions to dismiss.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Hugh R. Whiting", is written over a horizontal line. To the right of the signature, there is a smaller, less legible handwritten mark that could be interpreted as "By permission" or a similar phrase.

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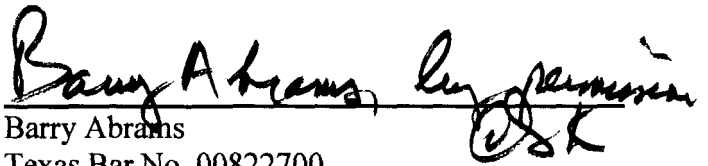
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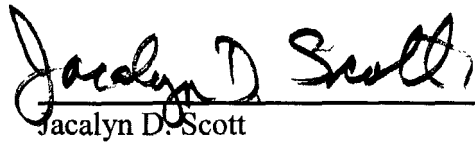
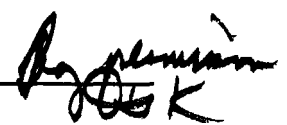
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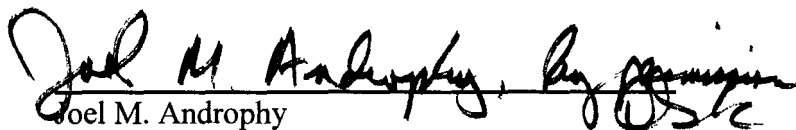
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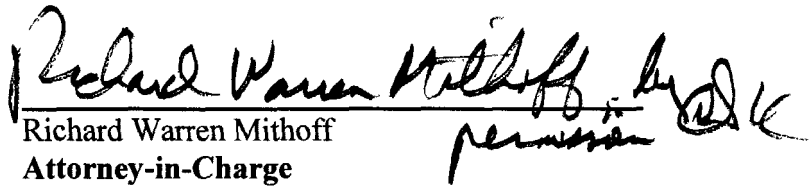
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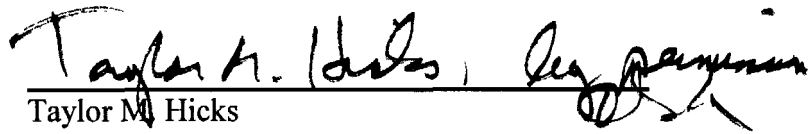
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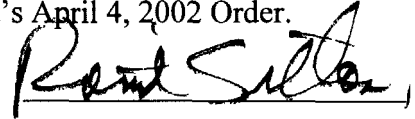
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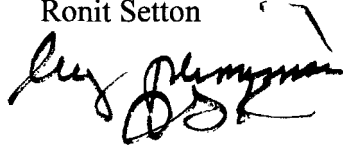
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 18th day of June, 2003, a true and correct copy of the foregoing supplemental response to Lead Plaintiff's Proposed Pretrial Scheduling Order was served on all counsel pursuant to the Court's April 4, 2002 Order.

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Ronit Setton

A handwritten signature in black ink, appearing to read "Day Zimmerman", written below the name "Day Zimmerman".